

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2002

CORAM

THE HONOURABLE MR.JUSTICE D.MURUGESAN

W.P.Nos.3451 of 1996

and

,6187,6716,6950 and 7009 of 1996

and

W.M.P.Nos.5552,10391,10631,10633 and 17475 of 1996

R.V.Thevar Memorial Girls High School

Cholapuram-626 139,Kamarajar District

rep.by its Secretary

V.Ramar .. Petitioner in all the Writ Petitions. petitions

-VS-

1.The Director of School Education

College Road, Madras-6.

2.The Chief Educational Officer

Virudhunagar.

3.The District Educational Officer

Virudhunagar. .. Respondent Nos.1 to 3 in all the writ petitions

4.Tmt.M.Chinnathai .. 4th respondent in W.P.Nos

3451 and 6187 of 1996

K.Vatsala Devi .. 4th respondent in W.P.No.

6716 of 1996

R.Sankara Easwari .. 4th respondent in W.P.No.

6950 of 1996

Smt.P.Ganapathi .. 4th respondent in W.P.No.

7009 of 1996

! For Petitioner in

W.P.Nos.6716,6950

and 7009 of 1996 : Mr.K.Srinivasan

For Petitioner in W.P.
Nos.3451 & 6187/1996 : Mr.AR.L.Sundaresan
for Mr.V.Ramajagadeesan

For Respondents 1 to 3 : Mr.S.V.Durai Solaimalai
Government Advocate

For 4th respondent in all
the writ petitions : Mr.K.Chandru, Senior Counsel
for Mr.D.Hariparanthaman

: COMMON ORDER

In all these writ petitions, questions raised are identical and hence
all the writ petitions are taken up for disposal by this common order.

2. The fourth respondents in W.P.Nos.6187,6716,6950 and 7009 of 1996 were appointed in the writ petitioner-school either as teacher or as junior assistant. The fourth respondent in W.P.No.6187 of 1996 viz., Tmt.M.Chinnathai was initially appointed on 5.6.1987 and thereafter she was removed from service on 12.10.1988. She was again appointed on 09.03.1989. The proposal forwarded by the writ petitioner management for re-appointment of the said teacher was refused by the second respondent, Chief Educational Officer by his order dated 03.02.1990 on the ground that the dismissal of the fourth respondent on 12.10.1988 was without prior approval. While that being so, the petitioner appointed one Selvasundari in the place of the fourth respondent viz., Tmt.M.Chinnathai and approval also was sought for the said appointment by the petitioner by its letter dated 3.4.1995. The request for approval was refused by the first respondent on 28.2.1996. As against the said order, the petitioner filed W.P.No.3451 of 1996. Subsequently, by an order dated 24.4.1996, the Director of School Education, the first respondent while cancelling the earlier order of the Chief Educational Officer dated 03.02.1990, directed the petitioner to take back the fourth respondent into service on the ground that the original order of removal was without any prior approval.

3. The fourth respondents in the other writ petitions viz., 6716,6950 and 7009 of 1996 were also removed from the school by the petitioner-management, for which approval was sought from the Chief Educational Officer by the petitioner-management. However, no orders were passed on the said request. Pursuant to their removal, the fourth respondent in each of the writ petitions made representations to the Director of School Education on the ground that, they were terminated from services without prior approval and were not allowed to perform their duties in the petitioner school. By separate impugned orders dated 30.5.1996, the Director of School Education, accepting the representations made by the fourth respondent in each of the writ petitions, directed the school management to reinstate them into service. These orders have been challenged by the management in the above writ petitions.

4. In all these writ petitions, questions that arise for consideration are as follows:-

a) Whether the orders of termination made by the writ petitioners school without prior approval of the competent authority could be sustained in the eye of law?

b) Whether the Director of School Education could issue directions to the writ petitioner-management to reinstate the fourth respondent in each of the writ petitions since they were terminated without following the procedures contemplated under the Tamil Nadu Private Schools (Regulation) Act, 1973 (hereinafter referred to as the Act and the Rules made thereunder)?

5. As per Section 22 of the Tamil Nadu Recognised Private Schools (Regulation) Act, subject to any rule that may be made in this behalf, no teacher or other person employed in any private school shall be dismissed, removed or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority. Rule framed in Paragraph No.7 in Form VII-A (vide Rule 15) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 provides the following.

" 7. That the School Committee shall not dismiss, remove or reduce in rank or terminate the services of the said teacher without informing him/her in writing on the grounds on which they intend to take action and shall adopt the following procedure before taking any final decision regarding the punishment to be imposed:

(a) The memorandum of charge shall be communicated to him/her in writing giving him/her reasonable time to send his/her explanation to the School Committee.

(b) After considering his/her explanation the School Committee shall communicate to him/her findings and if so desired by the said teacher conduct a personal hearing or enquiry, wherein he/she shall be given the opportunity to examine or cross-examine any or all the witnesses and also produce witnesses.

(c) After the conduct of the personal hearing or enquiry by the School Committee the report of such personal hearing or enquiry shall be furnished to the teacher and a notice shall be issued to him/her setting out the proposed punishment and he/she shall be given a reasonable time to defend himself/herself against the proposed punishment.

(d) After the receipt of the statement of defence from him/her and taking into consideration the School Committee shall inform him/her in writing about its final decision."

6. As per the above provisions, before the services of the fourth respondent in each of the writ petitions are terminated, the writ petitioner/management ought to have obtained the prior approval of the competent authority. It is the case of the petitioner that even though prior

approval was sought for, the same had neither been considered by the Chief Educational Officer nor was rejected insofar as the teachers in W.P.Nos.6187,6716,6950 and 7009 of 1996 are concerned. The Chief Educational Officer had rejected such a request only in the case of the teacher in W.P.No.6187 of 1996. The effect of non compliance of para 7 of Form VII A had come up before this Court for consideration and this Court in the judgment reported in 1998 W.L.R.769 (MANAGEMENT OF M.G.R.HIGHER SECONDARY SCHOOL, KODAMBAKKAM, MADRAS-28 -vs- NAG BALAJI SINGH AND OTHERS), has held that non compliance of the procedure as contemplated in Para 7 of Form VIIA would render the order of termination illegal.

7. In 1996 W.L.R.521 (THE AYYA NADAR JANAKIAMMAL COLLEGE -Vs- A. PANDIAN AND OTHERS) has held that termination without approval shall be ab initio void. The said judgment of the learned single Judge was also confirmed by the Division Bench in the judgment reported in 1997 W.L.R.629 (THE AYYA NADAR JANAKIAMMAL COLLEGE -Vs- A.PANDIAN AND OTHERS). In view of the above settled position of law, till such time the approval is granted, a teacher, even if an order of termination is issued, cannot be considered as terminated from service as per Section 22 of the Act read with paragraph No.7 of Form VIIA of the Rules. Admittedly, in none of the cases prior approval has been obtained by the petitioner before passing the orders of termination. Hence, the orders of termination cannot be sustained as per the provisions of the Act and Rules as they are ab initio void.

8. The learned counsel for the petitioner would challenge the impugned orders on the ground that before the said orders were passed, the petitioner was not given sufficient opportunity and was also not provided with the nature of the complaint given by each of the teachers. The learned counsel appearing for the petitioner further submitted that the Director of School Education has no power to consider the representations of the fourth respondent in each of the writ petitions and treat them as appeals and pass the impugned orders. The impugned orders have been passed by the Director of School Education by virtue of the powers conferred under Section 23 of the Act.

9. In all these cases, since the orders of termination are held to be ab initio void for want of prior approval from the authority, the affected teachers namely the fourth respondent in each of the writ petitions had no opportunity to prefer an appeal before the Director of School Education under Section 23 of the Act. However, they made representations to the Director of School Education on the ground that even though there was no prior approval before passing the orders of termination, their services were terminated and they were not allowed to perform their duties in the school. The said complaints/ representations were treated by the Director of School Education as appeals. He was of the view that when the original orders of termination itself were not approved and/or were made without any prior approval, in law the teachers are entitled to continue in service till such time the approval for termination is granted. As on today, the approvals sought for by the writ petitioner management have not been granted and, therefore, the Director of School Education was right in directing the writ petitioner-management to take back the fourth respondent in each of the writ petitions into service. I do

not find any infirmity in the order of the Director of School Education and, therefore, the contention of the learned counsel for the petitioner that before such orders were passed the petitioner ought to have been given opportunity, cannot be accepted. It is also to be noted that before the orders were passed the petitioner was in fact given opportunity to submit its statement before the Director of School Education, and such statement also was filed and an enquiry was also held in the presence of the petitioner and the teachers.

10. The learned counsel for the petitioner would further contend that in any event, in the absence of the copies of the complaints furnished to the petitioner, they were unable to refute the contents of the complaint and, therefore, to that extent the petitioner should be given an opportunity by furnishing a copy of the complaint and thereafter the Director of School Education should pass orders. Hence, the learned counsel for the petitioner submitted that the impugned orders are to be set aside and matters should be remitted back to the Director of School Education.

11. I am unable to accept the said contention of the learned counsel for the petitioner for the simple reason that once the order of the Director of School Education is set aside, that would amount to the revival of the illegal order of termination passed without prior approval by the writ petitioner-management. The said principle of law has been considered in the judgments reported in 1990 L.L.N.26 (INDIAN BANK -Vs- R.S.THIRUVENGADAM) and 1998 (8) S.C.C.17 (MAHARAJA CHINTAMANI SARAN NATH SHAHDEO -Vs- STATE OF BIHAR). The Division Bench of this Court, while considering the said principle of law has held that the Court cannot set aside an order which results in revival of illegal order. If the orders of the Director of School Education are set aside, the orders of termination passed by the writ petitioner-management without the prior approval of the Educational authorities would be revived. Hence, such an order as submitted by the learned counsel for the petitioner cannot be passed.

12. Under the circumstances, I have no hesitation to conclude that when the orders of termination are ex-facie illegal and void ab initio, no fault can be found in the orders of the Director of School Education in directing the writ petitioner-management to reinstate the fourth respondent in each of the writ petitions. For the above reasons, the challenge to the impugned orders of the Director of School Education cannot be sustained. Accordingly, W.P.Nos.6187,6716,6950 and 70 09 of 1996 are dismissed. Consequently, W.M.P.Nos. 10391, 10631, 1063 3 and 17475 of 1996 are also dismissed.

12. Coming to W.P.No.3451 of 1996 challenging the refusal of approval for terminating the services of the fourth respondent, made by the Director of School Education, it is to be seen that the said order of refusal has also been passed only on the ground that the order of termination has been passed without prior approval and also no enquiry has been conducted before passing such order of termination and the procedure contemplated under Section 22 read with Rule 15 para 7 Form VIIA of the Rules also have not been followed. Hence, I do not find any error in the said order of the Director of School

Education. Hence, the said writ petition also fails and the same is dismissed.

07-03-2002

Index:Yes/No

Website:Yes

kst.

To:

1.The Director of School Education
College Road, Madras-6.

2.The Chief Educational Officer
Virudhunagar.

3.The District Educational Officer
Virudhunagar.

D.MURUGESAN, J.

07.03.2002

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